

## Commentary

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I find the presentations of Professor Roberts and Professor Wedgwood very stimulating indeed. There are observations with which I am in complete agreement and it only remains to me to emphasize their significance. At the same time, there are also some points in both papers that, in my opinion, call for clarification or dispute.

First, about the relationship, discussed here by various speakers, between *jus ad bellum* and *jus in bello*. These branches of international law are separate in the sense that notwithstanding the status of parties of an armed conflict in the light of *jus ad bellum* (i.e., notwithstanding whether one is an aggressor or a victim of aggression), they are equal in the light of *jus in bello*. In that respect, the International Court of Justice (ICJ) in the advisory opinion on *Nuclear Weapons* created a novelty distinguishing between “an extreme circumstance of self-defense, in which the very survival of a State would be at stake”<sup>1</sup> and other circumstances. Only in the former circumstances, as the Court said, it “cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful.”<sup>2</sup> Paragraph 105 (2) E of the advisory opinion seems to indicate, on the one hand, that in all other circumstances the use of (or threat to use) nuclear weapons is unlawful, i.e., contrary to international humanitarian law. On the other hand, such a formula seems to make what would otherwise be unlawful under *jus in bello* lawful (or at least not necessarily unlawful) because of different status of parties in the light of *jus ad bellum*.

1. Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 78, ¶ 105(2)E (July 8) [hereinafter Advisory Opinion on Nuclear Weapons].

2. *Id.*

In *jus ad bellum* the concept of survival of a State may be expressed through the right to self-defense. Obviously, only a victim of an armed attack, and not its perpetrator, has such a right. A State that has committed an armed attack does not have the right to self-defense even if its survival is at stake as a result of measures taken in self-defense.<sup>3</sup> In *jus in bello* the victim's right to survival may be expressed through the concept of military necessity. As Judge Higgins, dealing with possible use of nuclear weapons, wrote in her Dissenting Opinion:

It must be that, in order to meet the legal requirement that a military target may not be attacked if collateral civilian casualties would be excessive in relation to military advantage, the 'military advantage' must indeed be one related to the very survival of a State or the avoidance of infliction (whether by nuclear or other weapons of mass destruction) of vast and severe suffering on its own population: and that no other method of eliminating this military target be available.<sup>4</sup>

This carefully formulated passage does not, however, explain why only a State acting in self-defense may use nuclear weapons as a last resort when its survival is at stake. Assuming that even a victim of an armed attack has to observe requirements of *jus in bello*, the only explanation seems to be that by committing an armed attack the aggressor has forfeited its right to survival expressed through the concept of self-defense. In that way, a wrong done in the light of *jus ad bellum* has an impact on *jus in bello* since the concept of survival crosses both branches of international law. The victim's right to survival raises the bar against which military advantage resulting, for example, from the use of nuclear weapons has to be measured. In such circumstances even significant civilian casualties may not be excessive in relation to the military advantage achieved.

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3. The requirements of necessity and proportionality may nevertheless protect the survival even of an aggressor State. A small-scale armed attack does not give the victim the right to respond by destroying the attacker. Although Professor Dinstein writes that "once the war is raging, the exercise of self-defence may bring about 'the destruction of the enemy's army,' regardless of the condition of proportionality," he correctly points out that "it would be utterly incongruous to permit an all-out war whenever a State absorbs an isolated armed attack, however marginal. . . . Proportionality has to be a major consideration in pondering the legitimacy of a defensive war." (YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 208–209 (3d ed. 2001)).

4. Advisory Opinion on Nuclear Weapons, *supra* note 1, Dissenting Opinion of Judge Higgins, ¶ 21.

Be that as it may with extreme circumstances of self-defense, it remains certain that all parties have to equally abide by the requirements of *jus in bello*.<sup>5</sup> In that sense these branches of international law are separate. However, this does not mean that there are no points of contact between *jus ad bellum* and *jus in bello*. For example, I find the link between *jus ad bellum* and *jus in bello* discussed in Professor Roberts's paper quite new and interesting. Indeed, extreme cases of violation of *jus in bello*, like massive violations of human rights, as he writes, "can help to legitimize certain uses of force."

Adam Roberts's conclusion is rather cautious; I would say a lawyerly one even though he is the Montague Burton Professor of International Relations at Oxford University. He says that massive violations of *jus in bello* *can help* (emphasis added) to legitimize certain uses of force. This seems to suppose that other conditions (say, threats to international peace and security) have to be, if not overwhelming, then at least playing a significant role in triggering such uses of force. However, even more importantly, Roberts uses the word "legitimize" instead of, for example, "making it lawful." This seems to indicate that his views on this issue are, if not identical, then at least close to those of Thomas Franck and Nigel Rodley who wrote in the aftermath of the Indian intervention in Eastern Pakistan:

[U]ndeniably, there are circumstances in which the unilateral use of force to overthrow injustice begins to seem less wrong than to turn aside. Like civil disobedience, however, this sense of superior 'necessity' belongs in the realm of not law but of moral choice, which nations, like individuals, must sometimes make weighing the costs and benefits of to their cause, to social fabric, and to themselves.<sup>6</sup>

Professor Franck made a similar comment more than a quarter of a century later observing that "NATO's action in Kosovo is not the first time illegal steps have been taken to prevent something palpably worse."<sup>7</sup> Bruno Simma, analyzing the Kosovo conflict, believes in the same vein that sometimes "imperative

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5. Here I have to express my reservations to Professor Wedgwood's comment that "most leaders and publics may in fact believe there is an important link between the legitimate purpose of a war and its allowable tactics." It may be true that many people believe indeed in the existence of such a link. Osama bin Laden and his ilk seem to be convinced of the existence of such a link. However, the acceptance of such an approach would lead to the erosion of the very foundations of *jus in bello*.

6. Thomas Franck & Nigel Rodley, *After Bangladesh: the Law of Humanitarian Intervention by Military Force*, 67 AMERICAN JOURNAL OF INTERNATIONAL LAW 304 (1973).

7. Thomas Franck, *Break It, Do Not Fake It*, 78 FOREIGN AFFAIRS 118 (1999).

political and moral considerations may appear to leave no choice but to act outside law” since “legal issues presented by the Kosovo crisis are particularly impressive proof that hard cases make bad law.”<sup>8</sup>

My comment on the last point is short. I am sure, only hard cases can make law for hard cases. If hard cases (and uses of military force are all hard cases) were to make only bad law or no law at all then there would be no *jus ad bellum* or *jus in bello*, for that matter, at all. Maritime delimitation cases or precedents on diplomatic privileges and immunities do not make law for *jus ad bellum* or *jus in bello*. Only practice involving use of force may make or change law governing use of force.

I would like to argue with Adam Roberts when he writes that “it is doubtful whether there is, or is likely to be a ‘right’ of humanitarian intervention” and that “the recognition of a link between *jus in bello* and *jus ad bellum* falls far short of any general recognition of a right of humanitarian intervention.” Taking into account what Professors Franck, Rodley and Simma have said on the issue and Roberts’s point that “massive violations of *jus in bello* can help to legitimize (emphasis added) certain uses of force,” one may conclude either that (1) certain uses of force are not suitable (amenable) for legal regulation, i.e., they have to be considered as being beyond the realm of international law or (2) though such uses of force are contrary to international law (i.e., they are unlawful), they are nevertheless legitimate since they are morally justifiable or in some instances even necessary from the moral point of view. Such an approach also presumes that some international practice is so unique, so exceptional, that it does not, cannot, or should not contribute to changes in law.

I cannot agree with that kind of reasoning both for practical and doctrinal reasons. First, speaking from the doctrinal point of view, I do not think that there can be or there should be such a gap between legitimacy and legality—between international law and morality. In most sensitive areas (use of force, human rights, etc.) international law is heavily value-loaded. If it is generally true that in international relations practice has a tendency to become law (*ex facto jus oritur*), morally justifiable practice, even if rare and unique, should be accepted sooner rather than later. In practical terms, if there were such a gap between law and morality it would be damaging for both of them.

It seems difficult indeed to conclude that Operation Provide Comfort in Northern Iraq, ECOWAS (Economic Community of West African States) interventions in Liberia and Sierra Leone, and Operation Allied Force in the

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8. Bruno Simma, *Nato, the UN and the Use of Force: Legal Aspects*, 10 EUROPEAN JOURNAL OF INTERNATIONAL LAW 3 (1999).

Federal Republic of Yugoslavia, together with some earlier cases of use of force where humanitarian considerations played at least some role, have led to the crystallization of a right of humanitarian intervention in international law. At the same time, these cases (and some even more ambiguous earlier examples) show that there is considerable tolerance towards interventions when humanitarian catastrophes are genuine and interventions can and do realistically alleviate the sufferings of thousands if not millions of people. Such tolerance is called in the language of international law “acquiescence” and it may contribute to changes in customary international law (or even treaty law).

If this practice and the reaction to it by the majority of States do not testify conclusively that there is a right to intervene militarily for humanitarian purposes, it means not only that at least some humanitarian interventions are legitimate (or as Roberts says, “massive violations of *jus in bello* can help to legitimize certain uses of force”) but also that such interventions are not unquestionably contrary to international law. A customary norm prohibiting any humanitarian intervention could not have crystallized in such circumstances. Therefore, I find that the purpose of Operation Allied Force, if not all the modalities of its execution, was not only morally justifiable, it was also not unlawful in the light of international law. Using the wording of Nguen Quoc Dinh, Patrick Dailler and Alan Pellet, “*l’intervention d’humanité ne bénéficie pas d’une habilitation expresse, mais sa condamnation ne fait pas non plus l’objet d’un consensus suffisant pour que ce soit dégagée une opinio juris qui permettrait d’affirmer l’illicéité de cette forme d’intervention.*”<sup>9</sup>

Today even this cautious formula seems too restrictive. I believe that State practice, especially in the 1990s, has shown that in the case of a clash between two fundamental principles of international law—non-use of force and respect for basic human rights—it is not always the non-use of force principle that has necessarily to prevail. Massive violations of human rights or humanitarian law may justify proportionate and adequate measures involving use of military force. Here one has to balance two conflicting principles by considering all concrete circumstances that necessarily are unique and urgent.

My next comment, and related to the previous one, concerns Professor Roberts’s point that “any decision of forcible intervention must involve a balancing of considerations in the face of unique and urgent circumstances, not

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9. “Though there is no express permission of humanitarian intervention neither is there consensus concerning the condemnation of such interventions that would amount to the *opinio juris* on the illegality of this form of intervention.” NGUEN QUOC DINH, PATRICK DAILLER AND ALAN PELLET, *DROIT INTERNATIONAL PUBLIC* 892 (5th ed. 1994).

the assertion of a general right.” I believe that there is not necessarily a contradiction between the existence of a right and the need to balance various considerations “in the face of unique and urgent circumstances.” In sensitive domains of international law and politics (and practically all issues involving use of force belong to this category) the need to balance not only various policy considerations but also different principles of international law, often indicating in opposite directions, is rather a rule than an exception. If there were no right to intervene for humanitarian purposes, then however much one balanced various considerations in the face of unique and urgent circumstances, any intervention would be unlawful.

The NATO intervention in the Federal Republic of Yugoslavia over Kosovo was the first collective intervention where humanitarian considerations were overwhelming. As it was not authorized by the Security Council, concerns for peace and stability in Europe (though they certainly played an important role) alone would not have justified this use of force. Therefore, the justifiable cause of the intervention was humanitarian. However, as humanitarian intervention has been and still is a highly contested concept, doctrinal works have so far been concentrated only on the issue of the legitimacy or legality (illegality) of the use of force for humanitarian purposes (*jus ad bellum* aspect). No attention has been paid to the legitimacy or legality of modalities of use of force for these purposes (which includes both *jus ad bellum* and *jus in bello* aspect). As Roberts has remarked, “in the long history of legal debates about humanitarian intervention, there has been a consistent failure to address directly the question of methods used in such interventions.”<sup>10</sup>

It goes without saying that the laws of armed conflict must apply in the case of humanitarian intervention. What interests us here is whether (and if yes, then to what extent) the objective of such intervention—protection of human rights—has any impact on the modalities of the use of force?

If we compare the modalities of the use of force as a collective security measure authorized by the Security Council under Chapter VII of the UN Charter with the modalities of the use of force in self-defense, we see that there may be substantial differences depending on the purpose of the use of force. Let us take as an example the response of the Coalition to the Iraqi aggression against Kuwait. In this response, there were elements of both collective

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10. Adam Roberts, *Nato's "Humanitarian War" over Kosovo*, 41 SURVIVAL, Autumn 1999, at 110.

self-defense and collective security.<sup>11</sup> The right to self-defense gave the Coalition the right (even without the Security Council authorization) to use force to liberate Kuwait, to put an end to the armed aggression and to restore the *status quo ante*. But only Security Council resolutions, as a measure of collective security under Chapter VII, created an adequate legal basis for the actions (including military) aimed at forcing the regime of Saddam Hussein to destroy its programs of production of weapons of mass destruction and missiles. These measures went beyond what a State (or States) can do in self-defense, but Security Council resolutions provided the basis for measures necessary for the restoration and maintenance of peace and security in the region.

In the area of self-defense, it is the *Caroline* formula that reflects customary international law. Secretary of State Daniel Webster wrote to Mr Fox, the British Minister to Washington, that it had to be demonstrated that there was the necessity to use force in self-defense that was “instant, overwhelming, and leaving no choice of means, and no moment for deliberation” and that the act “justified by the necessity of self-defense must be limited by that necessity, and kept clearly within it.”<sup>12</sup> There is no reason to believe that these requirements apply only in the case of self-defense or that this formula has in mind only so-called anticipatory self-defense. It seems to be possible to generalize all these criteria by the term of adequacy which, depending on the circumstances, includes necessity, proportionality and even immediacy. Every use of force, in order to be lawful, has to be adequate to the situation that calls for the use of force. Or to put it slightly differently: the modalities of the use of force have to correspond to the purposes of its use. This requirement belongs both to *jus ad bellum* and *jus in bello*.

Analyzing self-defense, Yoram Dinstein distinguishes between “on the spot reaction,” “defensive armed reprisals,” responses to an “accumulation of events” and “war of self-defence” as different modalities of the use of force that can be resorted to depending on the character of the armed attack that has triggered the right to use force in self-defense.<sup>13</sup> The legality of these modalities of self-defense is dependent on the character of the armed attack. Judith Gardam writes that “in the Gulf conflict the massive aerial bombardment

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11. See Rein Müllerson & David Scheffer, *The Legal Regulation of the Use of Force*, in BEYOND CONFRONTATION: INTERNATIONAL LAW FOR THE POST-COLD WAR WORLD (Lori Damrosch, Gennady Danilenko & Rein Müllerson eds., 1995).

12. JOHN BASSET MOORE, *The Caroline*, in 2 DIGEST OF INTERNATIONAL LAW 412 (1906). See also, R.Y. Jennings, *The Caroline and McLeod Cases*, 32 AMERICAN JOURNAL OF INTERNATIONAL LAW 82 (1938).

13. See DINSTEIN, *supra* note 3, at 192–221.



of the infrastructure of Iraq had to be balanced against its contribution to the removal of Iraq from Kuwait.”<sup>14</sup>

A good example of the adequacy of measures undertaken may be operations to rescue one’s nationals abroad, which is often considered to be a special case of self-defense. Whether one regards it as a separate ground for the lawful use of force or as being within the parameters of the right to self-defense, practically all authors agree that the purpose of the use of force (rescuing nationals) conditions the modalities that may be used. As C.H.M. Waldock wrote, measures of protection must be “strictly confined to the object of protecting them [nationals] against injury.”<sup>15</sup>

In the light of these distinctions between modalities of self-defense depending on the character of an armed attack, it seems natural that the modalities of the use of force for humanitarian purposes must also correspond to the objectives of the use of force. They have to be adequate to these objectives. Fernando Tesón writing of humanitarian intervention observes that “the general rule is that the coercion in the operation and the consequent harm done by it have to be proportionate to the importance of the interest that is being served, both in terms of the intrinsic moral weight of the goal and in terms of the extent to which that goal is served.”<sup>16</sup>

The objectives of Operation Allied Force, as declared by NATO and the G-8 and confirmed by the Security Council, where: (1) immediate and verifiable end of violence and repression in Kosovo; (2) withdrawal from Kosovo of military and paramilitary forces; (3) deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of common objectives; (4) establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo; (5) the safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian organizations; (6) a political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and

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14. Judith Gardam, *Necessity and Proportionality in Jus ad Bellum and Jus in Bello*, in *INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS* 281 (Lawrence Boisson de Chazournes & Philippe Sands eds., 1999).

15. C.H.M. Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 *RECUEIL DES COURS* 455, 467 (1952).

16. FERNANDO TESÓN, *A PHILOSOPHY OF INTERNATIONAL LAW* 64 (1998).



the other countries of the region, and the demilitarization of the KLA; and (7) a comprehensive approach to the economic development and stabilization of the crisis region.<sup>17</sup>

The question is: do these objectives that are different from objectives of other types of use of force (e.g., in self-defense or as a measure of collective security) determine also what kind of force can be used? Although neither the Hague or Geneva Conventions or Additional Protocols to the latter nor customary international law contain any references to wars of self-defense, collective security operations or humanitarian interventions, distinguishing only between international armed conflicts and armed conflicts of non-international character, that does not mean that requirements of necessity, proportionality or even immediacy may not lead to distinctions between applicable law depending on the purpose of the use of force.

It seems that the NATO response was not, using the *Naulilaa* formula, “excessively disproportionate”<sup>18</sup> to the achievement of the objectives of this humanitarian intervention. There was not simply a potential and imminent threat to human lives in Kosovo leaving little time for deliberation; human lives were actually being lost and crimes against humanity were actually being committed before NATO intervened. The world community, represented *inter alia* by the UN Security Council, had already given peaceful diplomacy a chance but the ethnic cleansing continued unabated.

The primary or general objective of any humanitarian intervention is to stop massive human rights violations. In the case of Kosovo it was to stop ethnic cleansing and, foremost, the murder and torture through which the ethnic cleansing was being carried out. All other objectives are to be subordinated to this primary objective. They are aimed at reversing, if possible, the results of human rights violations, at ensuring that violations will not recur in the future and at punishing those who have committed acts of genocide, war crimes or crimes against humanity. But the primary objective is to stop violations (i.e., to protect victims) that have engendered the intervention.

The NATO intervention, in the end, stopped such human rights violations. But the fact that it achieved this objective only in the end seems to be the major shortcoming of Operation Allied Force. I completely agree with Professor Roberts when he believes that “in the 1999 war it was

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17. See general principles on the political solution to the Kosovo crisis in Annex 1 of Security Council Resolution 1244 of 10 June 1999, U.N. Doc. S/RES/1244 (1999).

18. The *Naulilaa* Case (Port. V. Germ. 1928), 2 REPORTS OF INTERNATIONAL ARBITRAL AWARDS 1028 (1928).

disadvantageous to NATO, and to the inhabitants of Kosovo, that Milosevic was not confronted with a more convincing threat of land operations in the province.” The openly declared refusal to use ground troops and the exclusive use of air power allowed the ethnic cleansing not only to continue unabated, but also even to intensify for a while. Earlier Roberts had emphasized that “the initial exclusion of the option of a land invasion was the most extraordinary aspect of NATO’s resort to force.”<sup>19</sup>

One has to bear in mind that the Hutu extremists in their genocidal attack against the Tutsis in 1994 killed an estimated 250,000 to 500,000 people within approximately one month.<sup>20</sup> Ethnic cleansing, even without massive killing of the Rwandan scale, can also be carried out with extreme speed. The Croats, for example, drove out more than 200,000 Serbs from Krajina within just three days.<sup>21</sup> Thus, Milosevic could have expelled or killed most of the Albanian population of Kosovo while NATO was bombing targets in Serbia proper to protect the Kosovars. In humanitarian interventions, the exclusive use of aerial bombardment without even a plausible threat to use ground troops may be a terrible gamble. Therefore, an intervention seems to be inadequate to the objectives of the use of force when it is carried out by means of bombing military and dual-purpose objectives outside the area where human rights violations are being committed in order to persuade the authorities to stop violations, without at least being ready to use force to protect immediately and directly the victims of massive human rights violations. Here the remark of Professor Wedgwood that “a gradual war of attrition that might defeat Belgrade in slow motion was unacceptable in light of human values at stake in the conflict” is rather pertinent.

What may be adequate in a war of self-defense or in a war against terrorism (also a specific form of self-defense) may be inadequate in the case of humanitarian intervention. We see that just as modalities of use of force as a counter-measure depend on the characteristics of the initial wrong, so too does *jus in bello* (the law of armed conflict) depend on *jus ad bellum* (the law on lawful causes of use of force). Here the bridge between the two branches of international law is the requirement of adequacy (including, as it was said earlier, necessity, proportionality and even immediacy)—the requirement that is central to both of them. Daniel Webster, speaking of self-defense in the *Caroline* case wrote that “the act justified by that necessity of self-defense, must be limited

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19. Roberts, *supra* note 10, at 112.

20. Report of the Secretary-General, U.N. Doc. S/1994/640 (May 31, 1994).

21. Tim Judah, *Kosovo’s Road to War*, 41 SURVIVAL, Summer 1999, at 12.

by that necessity and kept clearly within it.”<sup>22</sup> We may paraphrase it by saying that an act justified by the necessity of humanitarian intervention must be limited by that necessity and kept clearly within it.

It seems that the bridge of adequacy between purposes of the use of force and its modalities is especially important today when threats to peace and security stem not so much from the clash of interests of superpowers or cross-border attacks by one State against another, but from internal conflicts, massive human rights violations and terrorism. Here Roberts’s remark about the restrictive character of the oft-quoted expression in the 1868 St. Petersburg Declaration that “the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy” is rather pertinent. As he writes, the laws of war “by no means exclude the application of military force against the adversary’s war-making capacity and system of government.” I support Roberts’s call to NATO members “to address the question of how their conception of war relates to the laws of war, and whether any modifications of either are indicated by this experience. The question of what is a military objective, addressed most extensively in Protocol I, is central.”<sup>23</sup>

The Kosovo experience shows that what is and what is not a military objective is, to an extent at least, dependent on the purpose of war. In that respect Roberts rightly draws our attention to the East Timor crisis writing that “it appears that a systematic campaign of bombing was not a serious option” in that crisis. Depending on the purposes of the use of force (e.g., to rescue one’s nationals abroad) the adversary’s armed forces (even the concept of adversary or enemy becomes uncertain in the case of many new threats) may not be the main target at all.

Adam Roberts wrote earlier that:

[T]he main problem in Kosovo was that, because it proved relatively easy to conceal military units and movable equipment from attacks from the air, there was especially strong pressure on the Nato alliance to attack fixed targets, which in many cases (bridges, power stations, buildings of various types, the broadcasting station in Belgrade) had civilian as well as military functions.<sup>24</sup>

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22. MOORE, *supra* note 12, at 919.

23. See Professor Roberts’s paper in this volume, *supra*, at 418.

24. *Id.*

In the light of what I have said above, I believe that targets such as bridges, power stations and other similar dual-purpose objects, which may be legitimate targets in the case of more conventional military operations (e.g., when force is used in self-defense), should not be military objectives (save maybe exceptional circumstances) in humanitarian operations.

All interventions that have so far been analyzed as humanitarian (notwithstanding whether accepted or rejected as such) have been carried out by ground troops and not by air strikes only.<sup>25</sup> The point is that though massive human rights violations may be stopped at the end of the day by hitting oppressive regimes' military and dual-purpose objects in order to persuade them to stop violations, the effects of such violations (which well may continue or even exacerbate while such military force is used) can be reversed only to an extent. Those who are killed remain dead. Those who are raped remain raped. Even those who are "only" expelled remain traumatized for the rest of their life and many of them, as historical experience shows, never return.

Ruth Wedgwood raises a delicate issue of "the difficulties controlling surrogate ground forces" or local insurgents who "share many of the illiberal qualities" of their opponents. In Kosovo such a force was the so-called Kosovo Liberation Army (KLA) whom President Clinton had earlier branded (and not without serious ground) terrorists. It is a dilemma of whether or not to support bad guys against the worst guys. Cooperation with such groups may be dictated by considerations of military necessity, but one should not forget that very often those who fight against oppressors fight only for their own freedom to oppress others.

One can only hope that after the Kosovo experience and other developments pointing in the same direction<sup>26</sup> at least some would-be human rights violators will not rely on State sovereignty and will think twice before embarking on their murderous paths. At the same time, this experience teaches us that it is difficult to protect other peoples' lives without being ready to sacrifice lives of one's own soldiers. In our so imperfect world those who care about human rights and want to make the world safer *vis-à-vis* terrorist attacks cannot afford to become soft. Unfortunately, dictators and terrorists (often these notions overlap since dictators use terror to stay in power, while terrorists are

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25. See, e.g., ANTHONY AREND & ROBERT BECK, INTERNATIONAL LAW AND THE USE OF FORCE 112–137 (1993).

26. For example, the functioning of the two *ad hoc* International Criminal Tribunals in The Hague, the arrest of General Pinochet in London, the adoption of the Statute of the permanent International Criminal Court.

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aspiring dictators who want to impose their beliefs and aims on others) understand and respect only force. Mutual hatred and respect between Stalin and Hitler was not accidental.